

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

PASAFESHARE LLC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 6:20-cv-00397-ADA

JURY TRIAL DEMANDED

JOINT MOTION FOR ENTRY OF A SCHEDULING ORDER

Plaintiff paSafeShare LLC (“paSafeShare”) and Defendant Microsoft Corporation (“Microsoft”) (collectively, the “Parties”) respectfully submit this Joint Motion for Entry of a Scheduling Order regarding deadlines that will govern up to and including the trial scheduled in this case for March 31, 2025 (Dkt. 179) in accordance with the Court’s rulings at the July 1, 2024, Pretrial Conference. The Parties are in agreement as to the deadlines set forth in the below table, but dispute the scope of one item. The Parties’ respective positions on such dispute is provided in the below table.

Deadline	Item
10/25/2024	paSafeShare serves Supplemental Expert Reports regarding damages.
11/22/2024	Microsoft serves Supplemental Rebuttal Expert Reports regarding damages.
12/6/2024	Close of Expert Discovery. The parties agree that each supplemental expert deposition shall be limited in scope to only the opinions newly-presented in the supplemental expert reports. ¹

¹ The parties shall meet-and-confer on the appropriate length of time for expert depositions. If the parties cannot agree, the parties shall promptly raise the issue with the Court.

1/6/2025	<p><u>paSafeShare's proposal:</u></p> <p>Dispositive motion deadline and <i>Daubert</i> motion deadline. Any additional dispositive and <i>Daubert</i> motions shall be limited to damages-related aspects of the case set forth in (1) the supplemental expert reports and/or (2) supplemental expert deposition testimony.</p> <p>See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).</p> <p><u>Microsoft's proposal:</u></p> <p>Dispositive motion deadline and <i>Daubert</i> motion deadline. Any additional dispositive and <i>Daubert</i> motions shall be limited to damages-related aspects of the case that were not previously raised in a dispositive and/or <i>Daubert</i> motion.</p> <p>See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).</p> <p><u>Parties' positions regarding their proposals:</u></p> <p><u>paSafe:</u> The parties already had the opportunity to brief dispositive motions. After the July 2024 pretrial hearing, the Court simply gave paSafeShare the opportunity to address damages in a supplemental expert report and Microsoft the opportunity to respond. Thus, any dispositive motions should be limited to the subject matter of the supplemental reports. Microsoft, however, now seeks to use this as an opportunity to bring dispositive motions related broadly to “damages-related aspects of the case” that it could have already brought.</p> <p>In addition, and totally separate and apart from any damages issues, Microsoft now seeks to use this as an opportunity to back-door a summary judgment motion related to willful infringement. But this issue is not related to any damages issue, much less to the supplemental reports relating to damages. Microsoft’s reliance on the Court recently denying its motion to dismiss willfulness is merely an excuse to file an untimely dispositive motion that it could have brought long ago.</p> <p><u>Microsoft:</u> Pursuant to the Court’s guidance at the July 1, 2024, pretrial conference, Microsoft does not seek to file any additional dispositive or <i>Daubert</i> motions on technical issues or issues that were raised in a prior dispositive or <i>Daubert</i> motion. <i>See</i> 7/1/24 PTC Tr. at 162. Microsoft should, however, be permitted to file additional motions in view of the Court’s rulings at the pretrial conference. For example, in</p>
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Deadline	Item
	<p>view of the Court’s denial of Microsoft’s motion to dismiss willfulness as a matter of course, Microsoft should be permitted to file a dispositive motion regarding paSafeShare’s willfulness claim (for which paSafeShare seeks enhanced damages). <i>See id.</i> at 160–62; Dkt. 69 (Amended Complaint) at 60 (requesting “enhanced damages in view of Microsoft’s willful infringement”). As another example, Microsoft may file a <i>Daubert</i> motion regarding irrelevant revenue numbers addressed in Mr. Blok’s original expert report to the extent Mr. Blok does not disavow such material in his supplemental report (even if such revenue is not specifically addressed in his supplemental report), which the Court invited at the last pretrial conference. <i>Id.</i> at 175–76 (“-- let me make it clear. If [these revenues are] something in their damages report and you think it shouldn’t be in there because it’s a <i>Daubert</i> and it’s not relevant, I will take it up substantively. ... Whatever numbers come in have to be relevant to the damages methodology.”).</p>
1/10/2025	<p>If applicable, serve amended Pretrial Disclosures (jury instructions, exhibits lists, witness lists, deposition designations). The parties agree that any amendments to pretrial disclosures shall be based on material relevant to opinions newly-presented in the supplemental expert reports.</p>
1/21/2025	<p>File oppositions to dispositive motions and oppositions to <i>Daubert</i> motions.</p>
1/28/2025	<p>Deadline to file replies to dispositive motions and <i>Daubert</i> motions.</p>
1/30/2025	<p>Serve objections to pretrial disclosures/rebuttal disclosures.</p>
2/3/2025	<p>Parties to jointly email the Court’s law clerk (<i>see</i> OGP at 1) to confirm their pretrial conference and trial dates.</p>
2/7/2025	<p>Serve objections to rebuttal disclosures.</p> <p>File motions <i>in limine</i>. The parties agree that any motions shall be limited to (1) damages-related aspects of the case set forth in the supplemental expert reports and (2) materials produced after the July 1, 2024 Pretrial Conference.</p>

Deadline	Item
2/11/2025	File amended Joint Pretrial Order and amended Pretrial Submissions (jury instructions, exhibits lists, witness lists, deposition designations).
2/14/2025	File oppositions to motions <i>in limine</i> .
2/19/2025	Deadline to file replies to motions <i>in limine</i> . File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com
2/20/2025	Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
2/21/2025	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
2/24/2025, 2/25/2025, or 2/27/2025, at the Court's convenience ²	Final Pretrial Conference. Held in person unless otherwise requested.
Week of 3/24/2025, at the Court's convenience	Jury Selection.
3/31/2025	Trial.

Dated: _____, 2024

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

² Lead counsel for Microsoft is unavailable on 2/26/2025 due to an in-person Markman Hearing before Judge Gilliland and on 2/28/2025 due to an unmovable professional obligation in Phoenix.